

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. **Sections Affected**

<u>Rulemaking Action</u>	<u>Rulemaking Action</u>
R15-5-152	New Section
Article 6	Amend
R15-5-606	Amend
R15-5-607	New Section
R15-5-2340	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 42-105, 42-1303

Implementing statute: A.R.S. §§ 42-1310.01; 42-1310.16; and 42-1408
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Christie Comanita, Tax Analyst

Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Telephoner: (602) 542-4672

Fax: (602) 542-4680
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the retail and prime contracting classifications. In addition, the rules provide information on the imposition of transaction privilege and use taxes on the sale or purchase of tangible personal property that is intended to be incorporated into a soil remediation project.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**

Identification of the Rulemaking:
The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the retail and prime contracting classifications. In addition, the rules provide information on the imposition of transaction privilege and use taxes on the sale or purchase of tangible personal property that is intended to be incorporated into a soil remediation project.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:
It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules and the addition of the new sections will benefit the public by clarifying vague and confusing issues. The department will incur the costs associated

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with the rulemaking process. Taxpayers are not expected to incur any expense in the making and amending of these rules.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christie Comanita, Tax Analyst
Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The department has not scheduled any oral proceedings. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statements may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the department will schedule oral proceedings if 5 or more people file written requests for oral proceedings within 30 days after the publication of this notice.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

R15-5-152. Tangible Personal Property Used in Soil Remediation Activities

ARTICLE 6. ~~Sales Tax~~—PRIME CONTRACTING CLASSIFICATION

R15-5-606. Land Clearing ~~clearing~~ and Well well Drilling drilling

R15-5-607. Termite Control

ARTICLE 23. USE TAX

R15-5-2340. Tangible Personal Property Used in Soil Remediation Activities

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-152. Tangible Personal Property Used in Soil Remediation Activities

The gross receipts from the sale of tangible personal property incorporated or fabricated into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-1310.16(B)(6) are exempt from tax. The gross receipts from the sale of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement are taxable.

ARTICLE 6. ~~Sales Tax~~—PRIME CONTRACTING CLASSIFICATION

R15-5-606. Land Clearing ~~clearing~~ and Well well Drilling drilling
a. Installation or repair of drainage or irrigation deliv-

drilling

A. A person engaged in the business of Original land clearing, leveling, ditching, well drilling, installing and installation of pumps in wells, and original land clearing for others is taxable under the prime contracting this classification-as contracting.

B. Subsequent repair or replacement of pumps is taxable under the retail classification (see Article 18). The installation of groundwater measuring devices required under A.R.S. § 45-604 and groundwater monitoring wells required by law is not taxable.

C. The excavation, removal, and transportation of contaminated soil and the treatment or disposal of the contaminated soil is not taxable.

D. The installation of structures, such as cutoff walls or caps, to contain contaminants present in ground water or soil and prevent the contaminants from reaching a location which could threaten human health or welfare or the environment is not taxable.

E. Agricultural production on tillage of improved farm lands, such as plowing, is not taxable.

1. Agricultural production includes the following activities:

a. Cultivating;

b. Disking;

c. Planting;

d. Plowing;

e. Seeding; and

f. Any other activity that directly relates to the production of crops on improved farm lands.

2. Agricultural production does not include the following activities:

ery systems;

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threaten human health or welfare or the environment is not taxable.

E. Agricultural production on tillage of improved farm lands, such as plowing, is not taxable.

1. Agricultural production includes the following activities:

- a. Cultivating;
- b. Disking;
- c. Planting;
- d. Plowing;
- e. Seeding; and
- f. Any other activity that directly relates to the production of crops on improved farm lands.

2. Agricultural production does not include the following activities:

- a. Installation or repair of drainage or irrigation delivery systems;
- b. Construction or repair of farm buildings or structures; or

- c. Any other activity which is not directly related to the production of crops on improved farm land.

R15-5-607. Termite Control

A person engaged in the business of treating real property for termite control is subject to tax under the prime contracting classification.

ARTICLE 23. USE TAX

R15-5-2340. Tangible Personal Property Used in Soil Remediation Activities

The purchase of tangible personal property for incorporation or fabrication into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-1310.16(B)(6) is exempt from tax. The purchase of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement is taxable.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

1. Sections Affected

R20-6-1601
R20-6-1604

Rulemaking Action

Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 20-143

Implementing statutes: A.R.S. §§ 20-261.01 through 20-261.04

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Gregory Y. Harris
Address: Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018
Telephone: (602) 912-8451
Fax: (602) 912-8452

4. An explanation of the rule, including the agency's reasons for initiating the rule:

These rule revisions are necessary to change references to publications that have been superseded by more current publications. The current references in the rules to the 1992 Annual Statement Instructions and Accounting Practices and Procedures and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400) will be updated with the 1997 Annual Statement Instructions and Accounting Practices and Procedures and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500).

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The summary of the economic, small business, and consumer impact:

These rules are required by the publication of more current versions of the 1992 Annual Statement Instructions and Accounting Practices and Procedures and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400).

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Gregory Y. Harris

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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June 17, 1998
Time: 2 p.m.
Address: Arizona Department of Insurance
Third Floor Training Room
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Nature: Oral proceeding for amendment of the rules. The Department will accept written comments which are received by 5 p.m. on June 17, 1998, or postmarked no later than that date.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
Not applicable.

11. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 16. CREDIT FOR REINSURANCE

Section

R20-6-1601. Credit for Reinsurance

R20-6-1604 Letters of Credit

ARTICLE 16. CREDIT FOR REINSURANCE

R20-6-1601. Credit for Reinsurance

- A. The requirements of A.R.S. § 20-261.01(A)(1) through (4) shall be determined as of the date of the ceding insurer's statutory financial statement in which the credit for reinsurance is claimed as an asset to or a deduction from liability.
- B. Accredited reinsurers
1. No assuming insurer shall be an "accredited insurer" ~~under for purposes of A.R.S. § 20-261.01(A)(2) until the Director's approval of the application that it has submitted made application to the Department on a form therefor on the form provided by the Director, and said application is either approved or not denied in accordance with paragraph (4) below.~~
 2. An application for accreditation as a reinsurer shall ~~include: be accompanied by the following items:~~
 - a. Form AR-1. The requirement to file with the Director evidence of a reinsurer's submission to this state's jurisdiction and to submit to this state's authority to examine its books and records, as set forth in A.R.S. § 20-261.01(A)(2)(a) and (b), shall be accomplished by filing with the Director a properly executed Form AR-1, attached as Appendix A to this Article;
 - b. A certified copy of a letter or a certificate of authority or a certificate of compliance as evidence that the reinsurer is: (i) licensed to transact insurance or reinsurance in at least 1 state or, (ii) if a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least 1 state;
 - c. A certified Certified copy of the most recent annual statement filed with the insurance department of the reinsurer's state of domicile and a copy of its most recent audited financial statement;

~~d. The payment of an application filing fee in accordance with A.R.S. § 20-230; and~~

~~e. Any other supporting documentation the Director may require.~~

~~d. Such other supporting documentation as the Director may require; and~~

~~e. Payment of an application filing fee in accordance with A.R.S. § 20-230.~~

3. The Director may examine ~~conduct~~ such examination of the reinsurer's books and records as deemed necessary ~~for and proper in connection with the application for accreditation, in accordance with A.R.S. §§ 20-142 and 20-156 through 20-160.~~

4. A reinsurer ~~is shall be an accredited reinsurer "accredited reinsurer"~~ if after submission of a complete application:

a. ~~The reinsurer~~ Director determines that it maintains surplus for as regards policyholders in an amount of not less than \$20 million, and the Director approves, or within 90 days of submission of ~~the its~~ application has not denied, its application; or

b. ~~The reinsurer~~ Director determines that it maintains surplus for as regards policyholders in an amount of less than \$20 million, and the Director approves ~~the its~~ application.

5. ~~An Every~~ accredited reinsurer shall file annually with the Director, ~~together the following: with filing fees in accordance with A.R.S. § 20-167.~~

a. Filing fees in accordance with A.R.S. § 20-167

~~b.a.~~ A certified copy of its annual statement that is filed with the insurance department of ~~the its~~ state of domicile, by or before March 1 of each year; and

~~c.b.~~ A copy of its most recent audited financial statement, by or before June 1 of each year.

6. The Director may revoke the accreditation of any reinsurer for cause, including failure to comply with ~~the requirements of A.R.S. § 20-261.01(A)(2) or this rule,~~ after notice and a hearing, in accordance with A.R.S. §§ 20-161 through 20-166.

7. A reinsurer may surrender its accreditation only upon application to, and approval by, the Director.

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- a. Filing fees in accordance with A.R.S. § 20-167
 - ~~b.a-~~ A certified copy of its annual statement ~~that is~~ filed with the insurance department of ~~the~~ its state of domicile, by or before March 1 of each year; and
 - ~~c.b-~~ A copy of its most recent audited financial statement, by or before June 1 of each year.
6. The Director may revoke the accreditation of any reinsurer for cause, including failure to comply with the requirements of A.R.S. § 20-261.01(A)(2) or this rule, after notice and a hearing, in accordance with A.R.S. §§ 20-161 through 20-166.
7. A reinsurer may surrender its accreditation only upon application to, and approval by, the Director.
8. No credit shall be allowed a domestic ceding insurer for reinsurance as an asset to or a deduction from liability on account of reinsurance ceded pursuant to A.R.S. § 20-261.01(A)(2) if the assuming insurer's accreditation has been denied, revoked or surrendered.
- C. Reinsurer domiciled and licensed in another state.
- 1. For purposes of A.R.S. § 20-261.01(A)(3), Substantially similar "substantially similar" standards under Rule 20-261.01(A)(3) means credit for reinsurance standards which the Director determines are equal to or exceed the standards of A.R.S. § 20-261.01 and this rule Article.
 - 2. The reinsurer shall submit to this state's authority to examine its books and records under A.R.S. § 20-261.01(A)(3) by filing Form AR-1. ~~requirement to submit to this state's authority to examine the reinsurer's books and records, as set forth in A.R.S. § 20-261.01(A)(3)(b), shall be accomplished by filing with the Director a properly executed Form AR-1.~~
- D. Reinsurer Reinsurers maintaining trust funds
- 1. For purposes of A.R.S. § 20-261.01(A)(4)(b), the aggregate policyholders' surplus of a group of incorporated insurers under common administration shall be calculated and reported in substantially the same manner as prescribed by the Annual Statement Instructions, copyright NAIC 1997 1992 Revised Edition and no later amendments or editions, and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, copyright NAIC 1997, Revised Edition, 1991 Third Printing and no later amendments or editions, incorporated herein and on file with the Office of the Secretary of State and available from the National Association of Insurance Commissioners, Publications Department, 120 West 12th Street, Suite 1100, Kansas City, Missouri 64105-1925.
 - 2. The reinsurer maintaining trust funds shall ~~requirement to submit to this state's authority to examine the reinsurer's books and records, as set forth in A.R.S. § 20-261.01(A)(4)(b), shall be accomplished by filing with the Director a properly executed Form AR-1.~~
 - 3. For purposes of A.R.S. § 20-261.01(A)(4)(b), the trust instrument shall expressly state provide that:
 - a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States; -
 - b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest.
 - c. The trust shall be subject to examination as determined by the Director; -
 - d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; -
 - e. No later than February 28 of each year, the trustees of the trust shall file a written report stating: (i) report to the Director in writing setting forth the balance in the trust, (ii) a list of and listing the trust's investments at the preceding year end, and (iii) a statement certifying shall certify the date of termination of the trust, if so planned, or a statement certifying certify that the trust shall not expire prior to the next following December 31; and-
 - f. No amendment to the trust shall be effective unless reviewed and approved in advance by the Director.
- E. For purposes of A.R.S. § 20-261.01(A)(5), "jurisdiction" means any state, district or territory of the United States and any lawful national government.
- R20-6-1604. Letters of Credit**
- A. For purposes of A.R.S. § 20-261.02, a letter of credit shall contain an issue date and an date of expiration date subject to the "evergreen clause" in subsection (D) of this rule. The letter of credit shall state that: (1) and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented for payment. (2) the need be presented. The letter of credit shall also indicate that it is not subject to any conditions or qualifications outside of the letter of credit. In addition, and (3) the letter of credit does itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (H)(1) below. As used in this Section, "beneficiary" includes any successor of the named beneficiary by operation of law, including without limitation any receiver, conservator, rehabilitator or liquidator.
- B. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- C. A ~~The~~ letter of credit shall state ~~contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is not in no way contingent upon reimbursement with respect thereto.~~
- D. The term of the letter of credit shall be for no less than 1 year, and the letter of credit at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days' notice prior to expiration or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of any state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, 1993 Revision (Publication 500) 1983 Revision (Publication 400) ~~and no later amendments or editions are incorporated, a copy of which is herein and on file with the Office of the Secretary of State and available from ICC Publications, 156 Fifth Avenue, New York, New York 10010, -and all All drafts of letters of credit drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.~~
- F. If the letter of credit is ~~made~~ subject to ~~the said~~ Uniform Customs and Practice for Documentary Credits of the Interna-

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tional Chamber of Commerce, then the letter of credit shall specifically provide for address and make provision for an extension of time to draw against the letter of credit if in the event that 1 or more of the occurrences specified in Article 17 thereof occur.

- G. If the letter of credit is issued by a financial institution other than a qualified United States financial institution as defined in A.R.S. § 20-261.03, then it shall be confirmed by such a qualified United States financial institution as follows: and the following additional requirements shall be met:
1. The issuing financial institution issuing the letter of credit shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts of the letter of credit; and
 2. The letter of credit shall contain an "evergreen clause", shall provide for 30 days' notice prior to expiration or nonrenewal.
- H. Reinsurance agreement provisions.
1. The reinsurance agreement for in conjunction with which the letter of credit is obtained may contain provisions which:
 - a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - b. Stipulate that the letter of credit provided by the assuming insurer under pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and The agreement shall be used utilized by the ceding insurer or its successors in interest only for the following: one or more of the following reasons:
 - i. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of the policies reinsured under the reinsurance agreement because on account of cancellation cancellations of the such policies;
 - ii. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid to the policy owners by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;
 - iii. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agree-

ment, such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves; and

- iv. To pay any other amounts the ceding insurer claims ~~are due~~ under the reinsurance agreement.
 - c. Require that the foregoing provisions of paragraphs (a) and (b) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
2. Nothing contained in paragraph (H) (1) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:
- a. An interest payment, at a rate not in excess of the prime rate of interest of ~~a the~~ qualified United States financial institution as defined in A.R.S. § 20-261.03 issuing or confirming the letter of credit, on the amount held under amounts held pursuant to paragraph (1)(b)(iii) of this subsection; and
 - b. The return of any amount amounts drawn on a letter the letters of credit which is in excess of the actual amount amounts due or, in the case of paragraph (1)(b)(iv) of this subsection, any amount amounts subsequently determined not payable to be due.
3. When an insurer obtains a letter of credit is obtained in conjunction with a reinsurance agreement which covers covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may state, instead in lieu of paragraph (1)(b) of this subsection, require that the parties enter into a "Trust Agreement". The trust agreement which may be incorporated into the reinsurance agreement or it may be a separate document.
- I. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in a financial statement financial statements required to be filed with the Director unless a an acceptable letter of credit naming with the filing ceding insurer as beneficiary is has been issued on or before December 31 in the year for which filing is made. The Further, the reduction in liability for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement secures, which the letter of credit was intended to secure.